

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SIDNEY E. SMITH III and)
JILL P. SMITH, Executors of the Estate of)
SIDNEY E. SMITH, JR., deceased)
Plaintiffs)
v.) CIVIL ACTION NO. 02-264 ERIE
UNITED STATES OF AMERICA,) ELECTRONICALLY FILED
Defendant)

PLAINTIFFS' SUPPLEMENTAL REQUEST FOR JURY INSTRUCTIONS

Plaintiffs SIDNEY E. SMITH III and JILL P. SMITH, Executors of the Estate of Sidney E. Smith, Jr., deceased, by and through their attorneys, MacDonald, Illig, Jones & Britton, LLP, request that the following additional instructions be given to the jury in the trial of this case. Plaintiffs reserve the right to request additional instructions and to request the withdrawal or modification of any of the following instructions if the trial of this case should make such action appropriate.

Respectfully submitted,

s/W. Patrick Delaney

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PLAINTIFFS' REQUESTED JURY INSTRUCTION NO. 4a.

In determining the "Fair Market Value" of a one percent (1%) interest in the Smith Family Limited Partnership, the following are relevant factors which should be considered by you. These following factors are not all inclusive, but are considered fundamental and require careful consideration:

- a. The nature of the business of the Smith Family Limited Partnership, including its underlying asset, Erie Navigation Company, together with a history of that enterprise from its beginning.
- b. The economic outlook in general, and the condition and outlook of the specific industry in which the Smith Family Limited Partnership was involved as of the date of the gifts in question.
- c. The financial condition of the Smith Family Limited Partnership and its underlying business, Erie Navigation Company.
- d. The earning capacity of the Smith Family Limited Partnership and its underlying business, Erie Navigation Company.
- e. The dividend paying capacity of the Smith Family Limited Partnership and its underlying business, Erie Navigation Company.
- f. Whether or not the Smith Family Limited Partnership or its underlying business, Erie Navigation Company, had good will or other intangible value.
- g. The market price of other similar interests in similar businesses, if that information is available.

The determination of Fair Market Value has no prescribed formula. There is no means by which various applicable factors or considerations can be assigned any mathematical weight in determining Fair Market Value.

Derived from Revenue Ruling 59-60.

Accepted _____

Rejected _____

Modified _____

Respectfully submitted,

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